

May 19, 2004

TIM OLSEN
12509 NE 198th STREET
BOTHELL WA 98011

Subject: Complaint filed against Andrea Norris Perry Campaign – PDC Case No. 04-311

Dear Mr. Olsen:

The Public Disclosure Commission staff has completed its investigation of your complaint received on November 12, 2003, alleging that 1) the Perry Campaign failed to report receipt of an in-kind contribution of professional services for website development, an alleged violation of RCW 42.17.080 and 42.17.090; 2) Ms. Perry's website failed to include sponsor identification, an alleged violation of RCW 42.17.510; and 3) the Perry Campaign made a false statement of material fact concerning the source of your campaign's contributions in a campaign flier and on Ms. Perry's web site, an alleged violation of RCW 42.17.530.

The PDC staff reviewed your allegations in light of the following statutes and administrative rule:

RCW 42.17.080 and 42.17.090 require reports disclosing the name and address of each person who has made one or more contributions during the period.

WAC 390-17-405 states (1) In accordance with RCW 42.17.020(14)(b)(vi), an individual may perform services or labor for a candidate or political committee without the recipient having received a contribution, so long as the individual is not compensated by any person for the services or labor rendered and the services are of the kind commonly performed by volunteer campaign workers. These commonly performed services include (k) Campaign consulting and management services, polling and survey design, public relations and advertising, or fundraising performed by any individual, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service.

RCW 42.17.510(1) requires all written political advertising, whether relating to candidates or ballot propositions, to include the sponsor's name and address. In addition, WAC 390-18-010(4) states that all printed advertising shall clearly state that it has been paid for by the sponsor, and includes an example stating, "Paid for by the XYZ Committee" with complete mailing address.

RCW 42.17.530(1)(a) prohibits a person from sponsoring with actual malice political advertising that contains a false statement of material fact about a candidate for public office. “Actual malice” means to act with knowledge of falsity or with reckless disregard as to truth or falsity. Any violation must be proven by clear and convincing evidence.

In-Kind Contribution, RCW 42.17.080 and 42.17.090:

You alleged that the Andrea Perry Campaign failed to report receipt of an in-kind contribution of professional services for the value of www.take-care.net site development, an alleged violation of RCW 42.17.080 and 42.17.090.

We found that:

- In 2001, Andrea Norris Perry established the website www.take-care.net to publish information pertaining to her perspective on local land use policies. Of the five total web pages, from June through November 2003, Ms. Perry devoted the front page to posting information advocating support of Mike Johnson, Ernie Bellecy, Tim Tobin, and her own candidacy for Bothell City Council. The website also advocated opposition to Tim Olsen, Mark Lamb, Diana Dollar and Cindy Honcoop’s candidacy.
- According to Ms. Perry’s voter pamphlet information, she was formerly a manager at Microsoft Corporation. In an interview under oath, Ms. Perry described that Microsoft employed her for ten years. During the first five years, Ms. Perry was employed as supervisor of the user education group, which produced online publishing. Ms. Perry stated that during her last 5 years of employment, she was a marketing manager responsible for public relations events. Ms. Perry stated that during this time, *“I did no computer work other than using Microsoft and Excel...for my projects.”*
- Ms. Perry stated that she alone created and maintained the website www.take-care.net, through a pre-designed product from Network Solutions, for which she entered text and picture files into the preformatted web page. Ms. Perry stated that she has never been paid to create or maintain a website, and acknowledged that although she has previously worked as a freelance graphic artist 17 years ago, the graphic work she produced was by hand on paper, and did not involve any computer work.
- According to the Network Solutions website, the product Ms. Perry purchased allows customers to choose from a library of images, layouts, and fonts to create the multi-page web sites, and the product allows editing of the site at any time. Given that Ms. Perry has not ever previously been paid to produce or maintain websites, and the product she purchased from Network Solutions is a pre-designed site that any customer can buy, there is no fair-market value to report for the web design.
- Ms. Perry stated that she did not report an in-kind contribution to her campaign for costs associated with web hosting for the www.take-care.net site because she was provided a year of free hosting by the company, Network Solutions, and because

PDC staff advised her that she did not need to report the value of web hosting. Ellen Brickman, Executive Support Specialist of Network Solutions, confirmed that Ms. Perry's site was renewed at Network Solutions' expense for the period of April 2, 2003 to April 2, 2004, due to technical problems associated with the site. Given that Ms. Perry did not pay for the web hosting, and that PDC staff advised her on October 31, 2003, to not report an in-kind expense because the hosting was provided for free during the period of political advertising due to earlier technical problems, there is no fair-market value to report for leasing the web domain.

Sponsor Identification, RCW 42.17.510:

You alleged that the Andrea Perry Campaign failed to include sponsor identification on the www.take-care.net site, an alleged violation of RCW 42.17.510.

We found that:

- Ms. Perry's website advocated support for her candidacy, and the candidacies of Mike Johnson, Ernie Bellecy and Tim Tobin. It also opposed the candidacies of Tim Olsen, Cindy Honcoop, Mike Lamb and Diana Dollar. Thus, the web site contained political advertising requiring sponsor identification.
- Network Solutions renewed the website on April 8, 2003 at its expense, however the owner of the website is Ms. Perry. Although the first page of the web site did provide Ms. Perry's name as publisher, it failed to state who sponsored or paid for the site and failed to include a mailing address.
- In accordance with PDC practice, a warning letter was sent to Ms. Perry stating that if future political advertising fails to comply with the sponsor identification requirements, the campaign will be asked to stipulate to a violation or will be scheduled for a brief enforcement hearing.

False Political Advertising, RCW 42.17.530:

You alleged that Ms. Perry violated RCW 42.17.530(1)(a) by including in her political advertising information on the source of your campaign's contributions displayed in a bar graph published on a campaign flier and the take-care website. Specifically, you alleged that, in spite of receiving information on October 30, 2003 that your contribution totals were incorrect, and should reflect \$1,835 from Bothell residents and \$3,300 from "business and property owners inside of Bothell," Ms. Perry continued published a bar graph via the take-care website stating that you accepted approximately \$9,500 total contributions, \$750 from "*Bothell residents*," and \$8,750 from "*non-Bothell contributors*" as of October 21, 2003. Included with your complaint was a breakdown of businesses and property owners inside of Bothell that you believed were incorrectly categorized.

We found that:

- The bar chart on the campaign flier and web site describes contributions as coming from one of two categories, "*Bothell residents*," or "*non-Bothell*

contributors,” for which the political advertisement does not define the assumptions used to group the contributions received in the categories. Although the campaign flier and web site contain text contrasting the source of contributions as coming from “*residents of Bothell*” vs. “*outside special interests,*” there is no mention of how Bothell business contributions were grouped.

- In an interview under oath, Mike Johnson, the creator of the bar chart, stated that his draft version of the political advertisement described the two groups as “*Bothell-resident*” and “*Non-Bothell residents*” to avoid confusion concerning how contributions from Bothell businesses were grouped. However, the final version of the graph identified contributions from non-Bothell residents as “*non-Bothell contributors.*” Ms. Perry stated that residents of Bothell were grouped in the “*Bothell-resident*” category, and businesses in Bothell were grouped in the “*non-Bothell-contributor*” category, which she believed the text of the flier made clear.
- In a telephone conversation with PDC staff, you clarified that you did not provide Ms. Perry with the breakdown of individuals and businesses that you believed were incorrectly categorized on the graph when you notified Ms. Perry of her incorrect information on October 30, 2003.
- As part of the complaint, you provided a listing of nineteen individuals that comprised the \$1,835 in contributions given by Bothell residents. You included contributions totaling \$385 that were not from Bothell residents, or that were filed with the PDC after October 21, 2003, the period covered by the bar chart. The remaining \$1,450 in contributions from Bothell residents included with your listing is consistent with the Olsen Campaign C-3 reports.
- As part of the complaint, you provided a listing of seven companies and two individuals that comprised the \$4,400 you described as “*contributions given by business and property owners inside of Bothell.*” In seven instances for contributions totaling \$3,650, the contributions could be described as a “non-Bothell contributor” because the contributions were either made by a corporation not located in Bothell or were made by individuals who do not reside in Bothell. However, two contributions totaling \$750 were made by businesses located in Bothell that cannot be accurately described as a “*non-Bothell contributors.*”
- Ms. Perry stated that she believed you received \$950 from Bothell Residents, and \$8,549 from non-Bothell residents, however she acknowledged that the bar chart on the flier and web site showed your campaign accepted approximately \$9,500 total contributions, \$750 from “*Bothell residents,*” and \$8,750 from “*non-Bothell contributors.*” Ms. Perry and Mr. Johnson stated that the graph contained an inadvertent error that undervalued your Bothell resident contributions by \$200,

and overvaluing non-Bothell contributions by \$200, but that the errors were unintentional.

- Ms. Perry's analysis of your contributors fails to include the names, address and contributions of \$250 each from Stephen Cox and Nadine Krause Cox, of PO Box 1648, Bothell Washington 98041 in the column totaling "*Bothell residents*." Ms. Perry stated she did not perform the final verification to confirm if a contributor was a Bothell resident and stated that Mr. Johnson was responsible for this step. Ms. Perry's analysis of your contributors also fails to include contributions totaling \$750 in the column "*Bothell residents*" made by two businesses, Fifth Avenue Associates and Business Property Development, located in Bothell.
- Mr. Johnson stated he searched for Mr. and Mrs. Cox residential listing in the phone book, through Internet searches, and on his voter registration roll, which was current through August of 2003, and did not find the couple listed. Mr. Johnson stated that he did not check further with King County Elections because it did not occur to him that his listing failed to include Bothell residents that registered to vote in September and October of 2003. According to Lisa Moore of King County Records, Elections and Licensing Services Division, Mr. and Mrs. Cox reside in Bothell, and are registered voters as of September 2003. Ms. Moore stated that Mr. and Mrs. Cox were not previously registered in Bothell.

Category of Contribution	Bar Graph Total	Ms. Perry's Total	PDC Total
Bothell residents	\$750	\$950	\$1,450
Bothell Businesses	Not incl.	Not incl.	\$750
Non – Bothell contributor	\$8,750	\$8,549	\$7,363.77
Grand total	\$9,500	\$10,032.95	\$10,097.72

Given that the campaign received contributions of \$1,450 from Bothell residents, \$750 from Bothell businesses, and approximately \$7,400 from residents and businesses not domiciled in Bothell, it appears the bar graph presented incorrect information in the political advertising. However, there is no evidence that Ms. Perry acted with "actual malice" by failing to include as a Bothell contributor the contributions of Mr. and Mrs. Cox, or the two businesses located in Bothell, given that Mr. Johnson searched extensively the couple's residential listing, and the intent of the flier was to contrast the source of contributions to "*residents of Bothell*."

While it would have been more in keeping with the intent and language of RCW 42.17.530(1)(a) for the campaign to identify contributions from non-Bothell residents as such, its failure to do so is at least in part mitigated by the fact that the public was able to review your C-3 reports at anytime through the PDC web site to identify the source of your contributions. Although it is unfortunate that there were errors made on the bar chart, and contributions were identified in a confusing manner, there is not clear and

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convincing evidence that any of the statements in the advertisement were made with actual malice.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Vice Chair of the Public Disclosure Commission, acting on behalf of the Chair, I am dismissing your complaint against the Andrea Perry campaign.

Sincerely,

Vicki Rippie
Executive Director

c: Andrea Perry, Bothell City Council Member